

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF**

77-4072

Docket 77-4072

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANASTASIOS KATRIS, a/k/a STASH KATRES,

Petitioner,

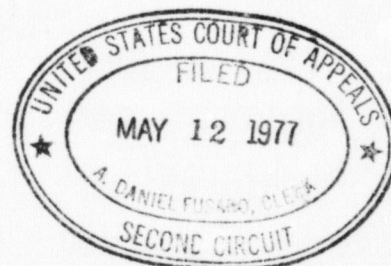
-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

PETITIONER'S BRIEF AND JOINT APPENDIX

DAVID E. OLTARSH
Attorney for Petitioner
225 Broadway
New York, N. Y. 10007



B
PK

TABLE OF CONTENTS

	<u>Page No.</u>
Statement of the Issues	1
Statement of this Proceeding	2
Statute Involved	2
The Facts	3-5
<u>Point I</u>	6
Petitioner's Interrogation and Seizure by INS Officers Without Any Reasonable Suspicion that he was an Alien Illegally in this Country Violated 8 U.S.C. 1357 (a)(1) Because it Constituted an Unconstitutional Invasion of his Fourth Amendment Protection Against Unreasonable Search and Seizure.	
<u>Point II</u>	10
Petitioner's Arrest by INS Officers, Without Probable Cause to Believe that he was Illegally in the Country and Without Probable Cause to Believe that Petitioner was Likely to Escape Before a Warrant Could Be Obtained Violated 8 U.S.C. 1357 (a)(2) and Failed to Meet Fourth Amendment Requirements.	
<u>Point III</u>	12
The Government Failed To Show Why a Search or Arrest Warrant was not Obtained in the Instant Case and Counsel's Motion to Suppress Should Have Been Allowed.	
<u>Point IV</u>	13
The Motion to Exclude Petitioner's Admissions (over Vigorous Objection) From the Deportation Hearing, Because That Evidence was the Fruit of an Illegal Search, Seizure and Arrest, was Wrongfully Denied.	

DAVID E. OLTARSKI
225 Broadway
New York, N. Y. 10007

ATTORNEY FOR PETITIONER

Point V

14

Motions to Suppress Evidence Which is the Fruit of an Illegal Search, Seizure and/or Arrest are Proper in Deportation Hearings.

Point VI

16

The Exclusionary Rule is not Limited to Criminal Proceedings and the Immigration Judge Wrongfully Refused to Apply the Rule.

Point VII

21

The Admission of the Confession Attributed to the Petitioner Rendered the Deportation Hearing Unfair Because its Consideration was Inconsistent with the Fundamental Principles of Justice Embraced Within the Concept of Due Process of Law.

Point VIII

23

The Government Should have been Absolutely Precluded from Asserting the Right to Use the Admissions Against Petitioner in the Deportation Hearing, Obtained After an Unlawful Arrest.

Point IX

24

There was no Evidence Adduced at the Deportation Hearing to Establish "Reason to Believe that the Alien was in the United States in Violation of Law or Regulation".

Point X

27

Though Deportation Cases have held to be Civil in Nature, Fourth Amendment Protections are Applicable to Petitioner. The Unlawful Arrest and Seizure of Petitioner Should Result in an Order of Suppression and a Termination of the Proceedings.

Conclusion

30

<u>CASES CITED</u>	<u>Page No.</u>
<u>Almeida-Sanchez v. U.S.</u> 413 U.S. 266 (1973)	9
<u>Au Yi Lau vs. United States INS</u> 144 U.S. App. D.C. 147, 445 F. 2nd 217 (1971)	6
<u>Bilokumsky v. Tod</u> 263 U.S. 149 (1923)	14
<u>Bong Yuon Choy v. Barber</u> 279 F. 2nd 642 (9th Cir. 1960)	21
<u>Boyd v. U.S.</u> 116 U.S. 616 (1886)	16, 18
<u>Brandt v. Hickel</u> 427 F. 2nd. 53 (9th Cir. 1970)	23
<u>Bridges v. Wixon</u> 326 U.S. 135 (1945)	19, 21
<u>Cheung Tin Wong vs. INS</u> 468 F. 2nd 1123 (1972)	9, 15
<u>Cal. State Bd. v. Coast Radio</u> 228 F. 2nd 520 (9th Cir. 1955)	24
<u>Coolidge vs. New Hampshire</u> 403 U.S. 443 (1971)	13
<u>Cooley v. Stone</u> 134 U.S. App. D.C. 317, 414 F. 2nd 1213 (1969)	19
<u>Hon Keung Kung v. D.D. INS</u> 356 F. Supp. 511 (1973)	12
<u>Illinois Migrant Council v. Pilliod</u> 398 F. Supp. 882 (N.D. Ill. 1975)	9, 10
<u>Gestuvo v. D.D. of INS</u> 337 F. Supp. 1093 (1971)	23
<u>Lattig v. Pilliod</u> 289 F. 2nd 478 (7th Cir. 1961)	22
<u>Knoll Assoc. v. F.T.C.</u> 397 F. 2nd 530	27

<u>CASES CITED</u>	<u>Page No.</u>
<u>In re: La Voie</u> 349 F. Supp. 68 (1972)	24
<u>INS v. Hibi</u> 475 F. 2nd 7 (9th Cir. 1973)	24
<u>La Franca v. I.N.S.</u> 413 F. 2nd 686 (2nd Cir. 1969)	24
<u>Lassoff v. Gray</u> 207 F. Supp. 843 (W.D. Ky. 1962)	27
<u>Lennon v. U.S.</u> (2nd Cir. 1975)	27
<u>Ex Parte Jackson</u> 263 Fed. 110 (D.C. Mont. 1920, Appeal Dis. Sub Nom <u>Andrews v. Jackson</u> , 267 Fed. 1022 (9th Cir. 1920)	27
<u>Mapp v. Ohio</u> 367 U.S. 643 (1961)	20
<u>McKiever v. Pa.</u> 403 U.S. 529 (1971)	18
<u>Monroe v. Pape</u> 365 U.S. 167 (1961)	18
<u>Ojeda-Vinales v. I.N.S.</u> 523 F. 2nd 286 (2nd Cir. 1975)	15, 25
<u>One 1958 Plymouth Sedan v. Pa.</u> 380 U.S. 693 (1965)	16, 18, 20
<u>Olmstead v. U.S.</u> 277 U.S. 438 (1928)	28
<u>Pizzarello v. U.S.</u> 408 F. 2nd 579	27
<u>Powell v. Zuckert</u> 366 F. 2nd 634	27, 28
<u>Rogers v. U.S.</u> 97 F. 2nd 691 (C.A. 1st - 1938)	27

<u>CASES CITED</u>	<u>Page No.</u>
<u>Shu Fuk Cheung v. INS</u> 476 F. 2nd 1180 (8th Cir. 1973)	15
<u>Smyth v. Lubbers</u> 398 F. Supp. 777 (W.D. Mich. 1975)	17
<u>Sung v. McGrath</u> 339 U.S. 33 (1950)	21
<u>Tover v. U.S.</u> 83 F. Supp. 47 (N.D. Ill. 1948)	27
<u>Terry v. Ohio</u> 392 U.S. 1 (1968)	6
United States vs. Brignoni-Ponce ____ U.S. ____, 95 S. Ct. 2574 (1975)	6, 7
<u>U.S. v. Blank</u> 261 F. Supp. 180	27
<u>U.S. v. Calandra</u> 414 U.S. 338 (1974)	28
<u>U.S. Janis</u> ____ U.S. ____, 96 Sup. Ct. 3021	29
<u>U.S. vs. Meza-Campos</u> 500 F. 2nd 33 (9th Cir. 1974)	12
<u>U.S. ex rel Hadrosek v. Shaughnessy</u> 101 F. Supp. 432 (1951)	24
<u>U.S. v. Karathanos</u> 399 F. Supp. 185 (E.D. N.Y. 1975)	15
<u>U.S. v. Ortiz</u> ____ U.S. ____, 95 S. Ct. 2585 (1975)	9
<u>U.S. v. Salter</u> Slip Op. p. 5647 (2nd Cir. 1975)	26
<u>U.S. v. Shute</u> 402 F. Supp. 1353 (W.D. Tex. 1975)	15

CASES CITED

Page No.

U.S. vs. Wong Quong Wong
94 F. 2nd 832 (D. Vt. 1889)

7, 14

Vlissidis v. Anadell
262 F. 2nd 398 (7th Cir. 1959)

14

Wellsville East Field Irr. Co. v. Lindsay
143 P. 2nd 278 (1943)

23

Weeks v. U.S.
232 U.S. 383 (1914)

18

Wong Sung vs. U.S.
371 U.S. 471 (1963)

13

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

ANASTASIOS KATRIS,
a/k/a STASH KATRES,

Petitioner

Docket No. 77-4072

-ag: et-

IMMIGRATION & NATURALIZATION
SERVICE,

Respondent

-----X

PETITIONER'S BRIEF

Statement of the Issues

1. Whether the Immigration Judge erred and abused his discretion in not permitting the petitioner or his employer to testify at the deportation hearing as to the necessary "reasonable suspicion" or "reason to believe" petitioner was an illegal alien as a preliminary issue in determining the validity of petitioner's arrest.

2. Whether the Immigration Judge erred in refusing to allow any testimony with regard to the facts and circumstances surrounding petitioner's arrest, notwithstanding the service upon the Trial Attorney for the respondent and upon the Judge of the petitioner's Notice of Motion to Suppress.

3. Whether the petitioner's constitutional rights were violated when he was arrested without any reasonable basis, probable cause or

reason to believe that he was an alien illegally in the United States.

4. Whether Immigration officers have the right to summarily seize, arrest and detain a person without obtaining any clue or reasonable basis to suspect that the said party is an illegal alien.

Statement of this Proceeding
Pursuant to Sec. 106(a) of the Immigration & Nationality
Act, 8 U.S.C. Sec. 1105(a)

The petitioner seeks from this Court in his petition a review of an order issued by the Board of Immigration Appeals on January 28, 1977 dismissing his appeal and confirming the previous order of deportation.

Statute Involved

Immigration & Nationality Act, Sec. 287, 8 U.S.C. 1357, provides in relevant part:

(a) "Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant - (1) to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States;

(2) To arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or expulsion of aliens or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States; * * * * "

The Facts

Petitioner is a native and citizen of Greece who entered the United States on or about September 25, 1971 at Buffalo, New York. He was not in possession, at that time, of a valid immigrant visa or other entry document.

On the date of his arrest by Immigration officers, petitioner was merely in the process of obtaining a drink of water after entering a restaurant on West 56th Street between Fifth and Sixth Avenues in the Borough of Manhattan.

An offer of proof was made at the deportation hearing that previous to his entry into the restaurant, three Immigration officers came into the restaurant premises asking various people in the restaurant, including the owner, for their green cards. All of the people interrogated exhibited green cards to the Immigration officers and their inquiries were unproductive insofar as seizing any illegal aliens. Subsequent to said inquiry, the petitioner came into the restaurant and was in the process of obtaining a drink of water when the Immigration officers came over to him and asked him for his green card. The petitioner stated that he was here on vacation and exhibited to the Immigration officers his driver's license from Illinois. It is claimed that at that moment, two of the Immigration officers seized him, one on either arm, and said "Come with us, you are under arrest, down to Immigration".

A further offer of proof was made to have the owner of the restaurant testify as to these facts, which he witnessed, but the Immigration Judge

refused this offered testimony.

It was further offered as proof by the petitioner at the hearing that he was not asked for his right to be and remain in the United States nor was he asked any other questions regarding his Immigration status. He was summarily placed under arrest after merely exhibiting his Illinois driver's license and stating that he was here on vacation.

Subsequent to petitioner's arrest, he was served with an Order to Show Cause dated October 24, 1975, and he appeared at a deportation hearing on November 7, 1975. Prior to the commencement of the deportation hearing, petitioner served a notice and affidavit upon the Trial Attorney for the Immigration Service and handed the original thereof to the Immigration Judge, asserting that petitioner wished to give sworn testimony and evidence relating to the facts and circumstances surrounding his arrest which was claimed to be unwarranted, unlawful and not based upon any reasonable suspicion that he was an illegal alien. The said affidavit and notice was received by the Immigration Judge during the deportation hearing and marked as Exhibit 2.

Notwithstanding petitioner's written request and oral request through counsel, that he wished to give sworn testimony on this issue, the Immigration Judge denied the application without offering petitioner any opportunity or right to testify about the facts and circumstances surrounding his arrest. The Immigration Judge did, however, permit a statement of an offer of proof which is contained in the minutes of the deportation hearing. Any admissions made by the petitioner at the

deportation hearing were made over objection with regard to the fact that the Immigration Judge refused to allow the suppression motion to be heard in the customary manner. The Immigration Judge thereafter rendered his decision, finding petitioner deportable and denying him the discretionary relief of voluntary departure.

It is further claimed that the Immigration Judge erred and abused his discretion in denying to the petitioner voluntary departure instead of deportation. Petitioner testified that he had ample funds with which to purchase his own ticket back to Greece and that he had never been convicted of any crime and had fully paid his taxes while working in the United States and was therefore eligible for the discretionary relief sought.

The Immigration Judge, nevertheless, ordered petitioner deported, claiming that he had deceived the authorities in entering the United States without inspection. The Immigration Judge further claimed that the petitioner's testimony that he was brought across the border by a stranger to whom he had paid no money was a contrived story. However, the actual fact is that there was no testimony to the contrary and the petitioner has a permanent resident sister and brother-in-law in New York.

The denial of the discretionary relief of voluntary departure was a gross abuse of discretion on the part of the Immigration Judge.

The application for voluntary departure in lieu of deportation should have been granted.

POINT I

PETITIONER'S INTERROGATION AND SEIZURE BY INS OFFICERS WITHOUT ANY REASONABLE SUSPICION THAT HE WAS AN ALIEN ILLEGALLY IN THIS COUNTRY VIOLATED 8 U.S.C. 1357 (a)(1) BECAUSE IT CONSTITUTED AN UNCONSTITUTIONAL INVASION OF HIS FOURTH AMENDMENT PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE.

Petitioner's interrogation and detention by INS officials while he was at work constituted a clear violation of his Fourth Amendment protections against unreasonable searches and seizures.

The powers granted to immigration officers and employees under 8 U.S.C. 1357 (a)(1) "to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States" are limited by the unreasonable search and seizure proscriptions of the Fourth Amendment. United States v. Brignoni-Ponce, _____ U.S. _____, 95 S. Ct. 2574 (1975). See also: Au Yi Lau v. United States INS, 144 U. S. App. D.C. 147, 445 F. 2d 217 (1971), cert. denied, 404 U.S. 864 (1971), where the court held that "....since aliens in this country are sheltered by the Fourth Amendment in common with citizens....a reading of the Congressional mandate of 1357(a) must be controlled by the constitutional standards governing similar detentions made by other law enforcement officials. See Terry v. Ohio, 392 U.S. 1. (1968)." at 223.

Petitioner's detention and interrogation in the case at bar constituted such an unlawful seizure, because the INS officers' actions were not based on a reasonably founded suspicion that petitioner was an alien illegally in this country. Petitioner's confession (Exhibit 5) was the

"fruits" of this unlawful search and seizure.

That aliens are entitled to Fourth Amendment protections even though they are concededly in the country without permission has long been established by the courts. In United States. v. Wong Quong Wong, 24 F. 2d 832, (D.Vt. 1889), an appeal of deportation orders, the court held that documentary evidence obtained by means of a seizure found to be unreasonable under the Amendment could not be used against the persons from whom the evidence was procured, because aliens were persons entitled to the Fourth Amendment guarantees, as well as citizens. The unlawfully seized evidence was thereupon suppressed.

In Brignoni-Ponce, supra, the Court held that a motion to suppress evidence in a criminal case involving the transportation of aliens was wrongfully denied by the trial court because the Fourth Amendment did not allow a roving immigration patrol to stop a vehicle near the Mexican border and question its occupants about their immigration status and citizenship without having certain specific articulable facts upon which to create a reasonable suspicion that the occupants were, indeed, illegal aliens. The Court further held that any longer detention or search must be based on consent or probable cause if it was to meet constitutional standards. In so ruling, the Court stated, "For the same reasons that the Fourth Amendment forbids stopping vehicles at random to inquire if they are carrying aliens who are illegally in the country, it also forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens." The Court thereby held that the Mexican appearance of the car's occupants, which had supplied the sole

basis for the Border Patrol's detention of the car, did not furnish reasonable grounds for believing that the occupants were aliens and that, therefore, their car was unjustifiably stopped.

Furthermore, the Court explicitly held that the effect of the Brignoni-Ponce decision was to "limit (the) exercise of the authority granted by both 287(a)(1) and 287 (a)(3)" in accord with the standards delineated supra at 2582. The Immigration Judge incorrectly ruled that 287 (a)(1) grants to INS agents powers which are not limited by the proscription of the Fourth Amendment.

In the case at bar, INS agents seized the petitioner without the requisite, constitutionally-mandated reasonable suspicion that he may have been an alien. At the time of petitioner's arrest he was working as a chef in a restaurant in Roosevelt Field and was not in the course of committing any crime or fleeing when the Immigration officers entered the restaurant. The Immigration officers had absolutely no basis for the arrest and seizure of petitioner and did not establish that he was an alien illegally in the United States prior to his arrest. There is no dispute of the Immigration officers' right to question petitioner but far beyond that, they summarily arrested and seized him without any articulable facts or reasonable basis whatsoever. As in Brignoni-Ponce, these factors fail to satisfy the threshold standard that persons may be stopped for questioning by INS agents vis a vis citizenship only when they "are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that (the persons detained) are aliens who may be illegally in the country". 95 S.

Ct. at 2582. See also: Cheung Tin Wong v. INS, 468 F. 2d 1123, 1127, _____ U.S. App. D.C. _____ (1972), where the court held that "the appearance of being oriental is (not) in any respect 'suspicion' and we wish to state in unequivocal terms that we could never condone stopping or questioning an individual simply because he looked to be of oriental descent."

Should it be found, in spite of the lack of articulable facts that a reasonable suspicion of petitioner's alienage was warranted by the INS officials his detention would nevertheless fail to meet Fourth Amendment standards of reasonableness, because the INS officers had no grounds, on the basis of any specific articulable facts and reasonable inferences drawn therefrom, to reasonably suspect that petitioner was an alien illegally in the country, prior to his interrogation.

Although the Court in Brignoni-Ponce specifically failed to determine whether INS officials also may stop persons reasonably believed to be aliens when there is no reason to believe they are illegally in the country that issue was considered in Illinois Migrant Council v. Pilliod, 398 F. Supp. 882 (N.D. Ill. 1975). Plaintiffs therein sued for declaratory and injunctive relief against INS agents, with respect to allegedly unlawful and unconstitutional stops and interrogations of persons of Mexican ancestry. The court, ordering the sought-for relief, held that, in light of the recent Supreme Court decisions fashioning out the Fourth Amendment parameters of 8 U.S.C. 1357 (Almeida-Sanchez v. United States, 413 U. S. 266 (1973); United States v. Ortiz, _____ U.S. _____, 95 S. Ct. 2585 (1975); and Brignoni-Ponce, *supra*), "(t)he only standard which is workable and

responsive to the command of the Fourth Amendment is that an INS agent must reasonably suspect on the basis of specific articulable facts and reasonable inferences drawn therefrom that a person is an alien illegally in the country before the agent may stop and interrogate that person pursuant to the authority of 1357 (a)(1)." 398 F. Supp. at 899.

No such evidence existed in Illinois Migrant-Council to warrant the INS agents' interrogation and detention of plaintiffs as they were walking to work one morning, and no such evidence exists in the case at bar. Although the court noted that apparent Hispanic ancestry can be considered with other factors, such as dress, hairstyle, speech, furtive conduct and flight, in order to justify the reasonable suspicion needed to allow interrogation of a person, none of those other facts are established in the case at bar. Just as Hispanic appearance alone fails, at law, to create a reasonable suspicion that a person is an alien, so too does it fail, at law, to establish a reasonable suspicion that the person is an illegal alien. Petitioner's detention and interrogation by INS officers therefore constituted an unlawful and unconstitutional abuse of the authority granted to immigration officials under 1357 (a)(1).

POINT II

PETITIONER'S ARREST BY INS OFFICERS, WITHOUT PROBABLE CAUSE TO BELIEVE THAT HE WAS ILLEGALLY IN THE COUNTRY AND WITHOUT PROBABLE CAUSE TO BELIEVE THAT PETITIONER WAS LIKELY TO ESCAPE BEFORE A WARRANT COULD BE OBTAINED VIOLATED 8 U.S.C. 1357 (a)(2) AND FAILED TO MEET FOURTH AMENDMENT REQUIREMENTS.

The pertinent language of 8 U.S.C. 1357 (a)(2) provides that:

"(a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have the power without warrant -- (2) to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or expulsion of aliens and is likely to escape before a warrant can be obtained for his arrest....."

This section is absolutely clear in its dual requirements that the arresting officers must have some reason to believe (1) that the suspect is in the United States illegally and (2) that the suspect is likely to escape before the ordinary warrant of arrest can be obtained. Furthermore, "the phrase ' reason to believe ' within the meaning of this section must be considered the equivalent of probable cause." Au Yi Lau, supra, 445 F. 2d at 222.

In the case at bar, it is clear that the INS agents had no reason to believe, much less any probable cause, that either factor was involved with respect to petitioner. The lack of articulable facts which could justify, on the part of the arresting INS officers, a reasonable inference that petitioner was an alien illegally in the country, has been discussed above.

Furthermore, petitioner's conduct in no way could have warranted a probable cause belief that he was likely to flee before a proper arrest warrant could be obtained. Petitioner was detained and arrested while he was in a restaurant. He made no attempt to run away from arresting officers. He was merely going about his own business when the agents came into the restaurant and began to interrogate him without any sufficient foundation for their belief that he was an illegal alien.

Petitioner's conduct was not the type intended by the statute to

justify the extreme and disfavored measure of making an arrest without a warrant. In Hon Keung Kung v. District Director, INS, 356 F. Supp. 511 (D.Mo. 1973), the arrest of an allegedly illegal alien was deemed proper because the officer knew that he had previously deserted his ship in violation of the law, with the apparent purpose of remaining in the United States. And in United States v. Meza-Campos, 500 F. 2d 33 (9th Cir. 1974), the court held that the arrestee's extreme nervousness gave the immigration officer the reasonable impression that the arrestee was looking for an opportunity to run, thereby justifying his arrest under 1357 (a)(2).

In sharp contrast to the cases, supra, petitioner's conduct in no way could have led the INS officers to believe -- either on a probable cause or reasonable inference standard -- that petitioner was likely to flee. Petitioner's arrest was therefore clearly violative of 8 U.S.C. 1357 (a)(2)

POINT III

THE GOVERNMENT FAILED TO SHOW WHY A SEARCH OR ARREST WARRANT WAS NOT OBTAINED IN THE INSTANT CASE AND COUNSEL'S MOTION TO SUPPRESS SHOULD HAVE BEEN ALLOWED.

At the hearing counsel for petitioner claimed that the evidence introduced was obtained without a search or arrest warrant. No search or arrest warrants were produced at the hearing by the Government.

In our judicial system there is a clear preference for searches conducted with warrants as opposed to warrantless searches. The actions of INS must comport with the basic constitutional rule that:

"Searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions." (citations omitted). The exceptions are "jealously and

carefully drawn," (citation omitted), and there must be "a showing by those who seek exemption.... that the exigencies of the situation made that course imperative. The burden is on those seeking the exemption to show the need for it." (citation omitted) Coolidge v. New Hampshire, 403 U.S. 443 (1971) at 454-455.

In the instant case the Government made no attempt to demonstrate that (1) there existed reasonable suspicion that petitioner was an alien illegally in this country and (2) that there existed exigent circumstances which justified the search and seizure of petitioner without a warrant. The Government failed to meet its burden, and petitioner's motions to suppress should have been allowed.

POINT IV

THE MOTION TO EXCLUDE PETITIONER'S ADMISSIONS (OVER VIGOROUS OBJECTION) FROM THE DEPORTATION HEARING, BECAUSE THAT EVIDENCE WAS THE FRUIT OF AN ILLEGAL SEARCH, SEIZURE AND ARREST, WAS WRONGFULLY DENIED.

The Immigration Judge apparently believed that only tangible evidence can be subject to a motion to suppress. It is well settled law that statements, written or verbal, as well as tangible evidence, which are the fruits of an illegal search and seizure cannot be admitted into evidence. Wong Sung v. United States, 371 U.S. 471 (1963).

The test generally applied to determine if evidence should be suppressed, including confessions, is whether granting the establishment of the primary illegality, the evidence sought to be suppressed has been derived by the exploitation of that illegality or by means sufficiently distinguishable to be purged of the primary taint. In the instant case it is difficult to imagine that petitioner's confession obtained by coercive

practices after petitioner had already been arrested at INS was not "tainted" by the illegal search and seizure conducted at petitioner's place of work. The Immigration Judge erred in denying petitioner any opportunity to establish the primary illegality, and to establish the "taint" between that primary illegality and his admissions.

POINT V

MOTIONS TO SUPPRESS EVIDENCE WHICH IS THE FRUIT OF AN ILLEGAL SEARCH, SEIZURE AND/OR ARREST ARE PROPER IN DEPORTATION HEARINGS.

The courts have firmly established, both explicitly and implicitly, that the exclusionary rule is applicable in deportation hearings, as well as in criminal proceedings. Mr. Justice Brandeis, concurring in Bilokumsky v. Tod, 263 U. S. 149, 157 (1923), stated, "(i)t may be assumed that evidence obtained by the Department (INS) through an illegal search and seizure cannot be made the basis of a finding in deportation proceedings."

In granting petitioner's motion to suppress unlawfully seized evidence in a deportation proceeding, the court in Wong Quong Wong, supra, at 833-834 stated, "it has been said that the manner of obtaining such evidence, whether by force or fraud, does not affect its admissability, but these (Fourth Amendment) constitutional safeguards would be deprived of a large part of their value if they could be invoked only for preventing the obtaining of such evidence and not for protection against its use." and in Vlissidis v. Anadell, 262 F. 2d 398, 400 (7th Cir. 1959), although the court held that the alleged unlawful arrest did not render the subsequent deportation proceedings null and void, it did hold that the evidence obtained as a result

of an unlawful arrest may be suppressed. In Illinois Migrant Council, the Court did an extensive survey of the Fourth Amendment rights of aliens and concluded

Were this a criminal case or deportation proceeding (as all of the reported cases in this area have been) the decisional process would be completed. Any evidence - tangible or testimonial.....derived from the obviously unlawful stops..... would be ordered suppressed. Supra.

The standard which must now be applied in determining whether the search and seizure, and/or arrest under 1357 was unlawful, thereby invoking the exclusion doctrine in deportation hearings, is the Brignoni-Ponce reasonable suspicion test. See Ojeda-Vinales v. INS, 523 F. 2d 286 (2nd Cir. 1975); Shu Fuk Cheung v. INS, 476 F. 2d 1180 (8th Cir. 1973); and Cheung Tin Wong v. INS, 468 F. 2d 1123 (D.C.Cir. 1972); where motions to suppress evidence in deportation proceedings, as being the fruits of an illegal search and seizure, or arrest, were denied because in each case, the search or arrest was found by the court to have been legal because they were based on a "reasonable suspicion" standard.

But see United States v. Shute, 402 F. Supp. 1353 (W.D. Tex 1975) and United States v. Karathanos, 399 F. Supp. 185 (E.D.N.Y. 1975), where the courts, employing the Brignoni-Ponce standard in criminal illegal alien cases, granted motions to suppress evidence unlawfully seized, on the basis of insubstantial and unreasonable suspicions with respect to the alienage of the defendants.

The cases cited reveal that it is perfectly appropriate to apply the exclusion rule in deportation proceedings when the evidence presented was

unlawfully obtained incident to an unlawful search and seizure or arrest.

POINT VI

THE EXCLUSIONARY RULE IS NOT LIMITED TO CRIMINAL PROCEEDINGS AND THE IMMIGRATION JUDGE WRONGFULLY REFUSED TO APPLY THE RULE.

That deportation proceedings are civil, rather than criminal in nature, is immaterial to the issue of applicability of the exclusion rule where evidence is unlawfully seized. The cases cited above exemplify numerous instances where the manner of seizure and arrest was investigated to determine whether evidence therefrom should have been excluded from deportation hearings. Furthermore, the exclusionary rule applies in other civil, quasi-criminal situations.

In One 1958 Plymouth Sedan v. Pennsylvania, 380 U. S. 693 (1965), the Court held that evidence seized in an illegal search of an automobile could not be constitutionally used in a proceeding for forfeiture of the automobile. In so holding, the Court explicitly rejected the Pennsylvania Supreme Court's determination that the exclusion rule applied only to criminal prosecutions and was therefore not applicable in the forfeiture proceeding, which was deemed civil.

To the contrary, the Court, relying on Boyd v. United States, 116 U.S. 616 (1886), held that because the purpose of a forfeiture proceeding, though technically civil, is to penalize for the commission of an offense against the law, it is quasi-criminal in nature, and thus, "within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution...." 380 U. S. at 698. Noting that the maximum penalties of the possible correlative criminal offenses with which the driver/owner of

the car may have been charged were less than the financial penalty of the forfeiture, itself, the Court stated, "it would be anomolous, indeed, under these circumstances, to hold that in the criminal proceeding the illegally seized evidence is excludable, while in the forfeiture procedure requiring the determination that the criminal law has been violated, the same evidence would be admissable." 380 U. S. at 701.

The applicability of the exclusionary rule in quasi-criminal proceedings is not limited to forfeiture or other in rem actions. Smyth v. Lubbers, 398 F. Supp. 777 (WD Mich. 1975), held that evidence seized in illegal and unconstitutional searches of college dormitories could not be used in college disciplinary proceedings against student residents. In that case, college officials entered and searched the students' rooms without a warrant and seized marijuana. The students were subsequently found guilty of possession of marijuana by the All College Judiciary, and were temporarily suspended from the college.

The court held that the search of the students' rooms for contraband, without probable cause and, absent exigent circumstances, without a warrant violated the students' Fourth Amendment rights. It further held that the exclusion rule was applicable to the college disciplinary hearing, and thus, that the evidence seized by college officials during their illegal search of the rooms was inadmissable at the hearing.

Suppression of the illegally seized marijuana was required, despite the court's express failure to characterize the charge, conviction, and suspension, as a formal criminal proceeding. It stated:

Because the Fourth Amendment, unlike, for example, the Sixth, is not limited to criminal prosecutions, it applies to "all alike, whether accused of crime or not," Weeks v. United States, 232 U.S. 383 (1914); see also, Monroe v. Pape, 365 U. S. 167 (1961); Boyd v. United States, 116 U.S. 616 (1886) (forfeiture proceeding); One 1958 Plymouth Sedan v. Pennsylvania, 380 U. S. 693 (1965) forfeiture proceeding), and it is not necessary to take the "wooden approach: of formally characterizing the College proceedings as either "civil" or "criminal". See McKeiver v. Pennsylvania, 403 U.S. 529, 541 (1971). But it is necessary to make a determination as to the relative hostility of the intrusion in this case. 398 F. Supp. at 786.

The court thereupon found that the object of the college's disciplinary proceedings relating to the possession of marijuana, as in Plymouth Sedan, is to penalize the commission of an illegal offense. As in Plymouth Sedan, the students were subject to formal criminal proceedings, and proof that the college regulations had been violated required proof that the criminal law, as well, had been violated. As in Plymouth Sedan, the students' suspensions from school were considered a harsher punishment than that they would probably have received if they had been convicted under the appropriate state or federal criminal statutes. In sum, the court determined that the students were in the same position as persons suspected of a criminal offense. Therefore, regardless of whether the college disciplinary hearing was criminal or civil, the illegally seized evidence would not be admissible.

Parallels are also found in juvenile proceedings, which are formally characterized as civil, rather than criminal. Courts have consistently held that Fourth Amendment guarantees and the concomitant exclusionary rule against the admission of the products of an illegal search and sei-

sure are applicable in such hearings. See, e.g., In Re Harvey, 22 Pa. Super. 222, 295 A. 2d 93 (1972); In Re Marsh, 40 Ill. 2d 53; 251 N.E. 2d 529 (1968); Cooley v. Stone, 134 U.S. App. D. C. 317, 414 F. 2d 1213 (1969).

As with Smyth-type disciplinary hearings and juvenile proceedings, the law of Plymouth Sedan - that the Fourth Amendment exclusion rule is necessarily invocable irrespective of the classification of an action as civil or criminal when the purpose of the action is to penalize - clearly controls with respect to deportation proceedings.

Although deportation proceedings are technically not criminal in form, it is obvious that deportation is a penalty for a criminal offense. In the case at bar, petitioner is in the same position as a criminal defendant because proof that the petitioner is deportable requires proof that the criminal law relating to illegal alienage has been violated. See Immigration and Naturalization Act of 1952, 8 U.S.C. Sect. 1304 (3), 1306 1325 (1952). Furthermore, the consequences to an individual found to be deportable are more severe than any of the criminal sanctions affixed to those criminal statutes, supra. A deported alien may be permanently deprived of a home, family, friends, and property, not to mention liberty. The Supreme Court has recognized that, "(A)lthough deportation technically is not criminal punishment, it may nevertheless visit as great a hardship as the deprivation of the right to pursue a vocation or calling...(D)eportation may result in the loss of 'all that makes life worth living.' (citations omitted)" Bridges v. Wixon, 326 U.S. 135, 147 (1945).

Thus, deportation proceedings, consistent with the Court's analysis in

Plymouth Sedan, are clearly quasi-criminal in nature. The exclusion rule must, therefore, be applied in deportation proceedings where the evidence sought to be suppressed has been illegally seized. To hold otherwise would vitiate entirely the very purpose of the rule, "to deter - to compel respect for the constitutional guaranty in the only effective way - by removing the incentive to disregard it." Mapp v. Ohio, 367 U. S. 643, 656, (1961) (citations omitted). It would be anomalous in the case at bar, as it would have been in Plymouth Sedan, to hold that in criminal proceedings under the Immigration and Naturalization Act, illegally seized evidence would be excludable, while in the deportation proceeding, that same evidence would be admissible.

The petitioner must be given the opportunity to present evidence to show that his interrogation and detention under 8 U.S.C. 1357 (a)(1) was not lawful, and the INS must be required to meet its burden of showing that the arrest of petitioner pursuant to 8 U.S.C. 1357 (a)(2) without a warrant met the standard of probable cause and exigent circumstances, as constitutionally required. If petitioner can do so, and/or if the INS fails to carry its burden, the exclusionary rule must be applied to the instant case, to suppress the evidence of petitioner's confession, as being the product of an unlawful search, seizure and arrest.

To fail to permit such a determination would be to ignore and flaunt the traditional high regard and esteem the courts have afforded the Fourth Amendment guarantees to individuals.

POINT VII

THE ADMISSION OF THE CONFESSION ATTRIBUTED TO THE PETITIONER RENDERED THE DEPORTATION HEARING UNFAIR BECAUSE ITS CONSIDERATION WAS INCONSISTENT WITH THE FUNDAMENTAL PRINCIPLES OF JUSTICE EMBRACED WITHIN THE CONCEPT OF DUE PROCESS OF LAW.

It is clear that a deportation hearing must satisfy the currently prevailing norms of fairness. Sung v. McGrath, 339 U. S. 33 (1950). Although it is true that the judicial rules as to the admissibility of evidence need not be followed in a deportation case, the concept of due process is applicable to such a proceeding. Deportation is a process of such serious moment that on all controverted matters the executive officers should consider the evidence with close scrutiny. As stated in Bridges v. Wixon, 326 U. S. 135, 154 (1945):

Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.

In view of the totality of the circumstances surrounding the custody of the petitioner, the statement which was alleged to have been signed by him was so untrustworthy that its consideration was violative of due process (see Affidavit of Petitioner in Support of Motion to Suppress).

If a judgment of deportation is to rest upon admissions attributable to the person to be deported, the admission must have been made by him as a free agent and under circumstances which raise no doubt whether they were freely made. The applicable principle of law was stated in Bong Youn Choy v. Barber, 279 F. 2d 642 (9th Cir. 1960). The court held that where im-

proper conduct by Immigration agents induced admission made by an alien the day following such conduct, such admission could not be used as a basis for deportation and its inclusion into evidence transgressed due process of law. The court said that "deportation cannot turn on utterances cudgeled from the alien by government authorities." supra at p. 646. The factors to be taken into consideration are the petitioner;s knowledge and experience, the methods used by INS officers including promises of leniency, imposition of duress, and the unusual time of interrogation.

Other circumstances must be considered. The petitioner was totally unfamiliar with certain basic rights which typically accompany an arrest or seizure. He had never been placed in confinement or under arrest by any official action before. He was never told, nor did he have actual knowledge that he could remain silent without retaliatory consequences. The Immigration Judge should have considered these facts in determining whether the statements or admissions made by petitioner after his arrest were the product of a free will or were made subsequent to an illegal and unlawful seizure and arrest.

Furthermore, given the totality of the circumstances it is obvious that the decision of deportability was not based on reasonable, substantial and probative evidence as required by 242b Act of 1952, 8 U.S.C. 1252 (b). Cases have held that the evidence must be at least adequate to support the conclusion; i.e., it must be such as a reasonable mind would accept as adequate to support the conclusion. Lattig v. Pilliod, 289 F. 2d 478 (7th Cir. 1961).

POINT VIII

THE GOVERNMENT SHOULD HAVE BEEN ABSOLUTELY PRECLUDED FROM ASSERTING THE RIGHT TO USE THE ADMISSIONS AGAINST PETITIONER IN THE DEPORTATION HEARING, OBTAINED AFTER AN UNLAWFUL ARREST.

The case of Gestuvo v. District Director of U. S. INS, 337 F. Supp. 1093 (1971) explicitly held that the INS is not immune from estoppel. The case refused to accept the argument that estoppel is not applicable to Federal officers or agencies. The Court concluded that such an argument was simply the outgrowth of the outdated doctrine of sovereign immunity.

In recent years the doctrine of sovereign immunity has begun to crumble and so have the rules insulating government from estoppel. The government's activities have extended to more and more facets of our national life; restrictions on the availability of estoppel have begun to give way before the demand to hold the government to the same standards of rectitude and conscientiousness to which the government itself seeks to hold private parties with whom it deals. supra at p. 1098.

Furthermore, it is clear that the court accepted the rationale of previous cases which had held that under circumstances which would estop a private individual an estoppel may be asserted against the U. S., agency, commission, or officer. The court noted that such was the clear implication of the case of Brandt v. Hickel, 427 F. 2d 53 (9th Cir. 1970) which was cited at p. 1098.

Estoppel has been said to involve turpitude or fraud such as misleading statements or acts or concealment of facts by silence, with the result that one party is induced by words, conduct or silence of the other party to do things which he otherwise would not have done. Wellsville East Field

Irr. Co. v. Lindsay Land and Livestock Co., 143 P. 2d 278 (1943). The Court in Gestuvo detailed the factors required to establish estoppel. The Court cited Cal. State Bd. of Equalization v. Coast Radio Products, 228 F. 2d 520 (9th Cir. 1955):

Party to be estopped must know the facts, he must intend that his conduct shall be acted upon or must so act that the party asserting the estoppel has a right to believe it so intended, the latter must be ignorant of the true facts, and he must rely on the former's conduct to his detriment. Supra at p. 525.

In a number of cases an estoppel has been successfully involved against Immigration agents. United States ex rel. Hadrosek et al. v. Shaughnessy, 101 F. Supp. 432 (1951); In re LaVoie, 349 F. Supp. 68 (1972); INS v. Hibi, 475 F. 2d 7 (9th Cir. 1973). Of course, each case must be decided on its own facts.

POINT IX

THERE WAS NO EVIDENCE ADDUCED AT THE DEPORTATION HEARING TO TO ESTABLISH "REASON TO BELIEVE THAT THE ALIEN WAS IN THE UNITED STATES IN VIOLATION OF LAW OR REGULATION".

The statute referred to previously, Sec. 287(a)(2), requires reason to believe that the alien is in the United States in violation of law or regulation before a valid arrest can be made. The "reason to believe" referred to in the statute has been analogized to "probable cause" which traditionally underlies criminal arrests. La Franca v. INS, 413 F. 2d 686, 689 (2nd Cir. 1969).

In the instant case the Immigration Judge refused to permit the PETITIONER to describe the facts and circumstances surrounding his arrest

and detention, notwithstanding the admission into evidence of Exhibit 2, which alleged that petitioner had been unlawfully arrested.

Thus, in effect, the Immigration Judge held that no matter what the circumstances of a seizure or arrest of an alien in the United States, no issue can be raised as to the legality, reasonable suspicion, or lack of probable cause of such an arrest.

It is respectfully submitted that this is not the law.

In a recent case, Jose Gil Ojeda-Vinales v. INS, Docket 74-2634, decided September 23, 1975, by the U. S. Court of Appeals, Second Circuit, the Court sustained the validity of the arrest therein only by a finding that there was probable cause because of information supplied to the Immigration Service in the nature of a complaint that a specifically described illegal alien named Jose was working as a mechanic at a specified address. Officers went to that address and were advised by the garage owner that a person of that description was in fact employed there. On these particular facts the Court of Appeals held that there was a reasonable suspicion to establish probable cause to interrogate and arrest the alien.

The Court stated in Ojeda-Vinales (supra):

"Section 287(a)(1) permits INS officers to interrogate and temporarily detain an alien upon circumstances creating a reasonable suspicion, not rising to the level of probable cause to arrest, that the individual so detained is illegally in this country. Au Yi Lau v. I.N.S., 445 F. 2d 217, 223 (D.C. Cir. 1971)."

Obviously, if no requirement of reasonable suspicion was necessary, the Court of Appeals would not have spent four pages in Ojeda-Vinales dis-

cussing probable cause and reasonable suspicion necessary to arrest an alien. See U. S. v. Salter, slip op. page 5647 (2d Cir.) 8-15-75; U. S. v. Brignoni Ponce --- U. S. ---, 43 U.S.L.W. 5028, 5032, U. S. June 30, 1975.)

Accordingly, it is respectfully submitted that the Immigration Judge erred in refusing to permit the petitioner to testify as to the facts and circumstances surrounding his claimed unlawful arrest. No evidence of a reasonable suspicion was established by the Immigration Service.

The only evidence adduced at the deportation hearing was the evidence objected to by the respondent insofar as admissibility was concerned. The Immigration Judge totally disregarded the objections to admissibility of this evidence and found him deportable on this testimony.

It is respectfully submitted that the petitioner, over objection, did not deny his country of birth, his citizenship or the other allegations contained in the order to show cause. The truth of the allegations would have been conceded but their admissibility is what was being challenged; as having been unlawfully obtained subsequent to an illegal arrest.

It is analogous to a criminal defendant admitting that the object which a District Attorney holds up in Court is a revolver or a container of heroin, but contests admissibility against him by reason of an illegal or unlawful arrest and search, and the improper obtention of the evidence. Obviously, no one would deny the actual fact that the revolver is a revolver, or that the blackjack is a blackjack. What is being contested is not the truth of the item's identity (in this case that of the petitioner himself), but the admissibility of the evidence challenged by a claim of unlawful arrest without probable cause.

POINT X

THOUGH DEPORTATION CASES HAVE HELD TO BE CIVIL IN NATURE, FOURTH AMENDMENT PROTECTIONS ARE APPLICABLE TO PETITIONER. THE UNLAWFUL ARREST AND SEIZURE OF PETITIONER SHOULD RESULT IN AN ORDER OF SUPPRESSION AND A TERMINATION OF THE PROCEEDINGS.

It has been held that deportation cases are not criminal in nature. Judge Kaufman in a recent decision in this Court, Lennon v. INS, decided on October 7, 1975, stated regarding deportation:

"But in severity it surpasses all but the most Draconian criminal penalties."

The exclusionary rule under the Fourth Amendment has been applied to civil proceedings which involve intra-sovereign violations. In other words, where Federal officers violate a person's Fourth Amendment rights the illegally-obtained information may nevertheless be suppressed although the proceedings are civil rather than criminal.

Pizzarello v. U. S., 408 F. 2d 579; Knoll Associates Inc. v. F.T.C. 397 F. 2d 530; Powell v. Zuckert, 366 F. 2d 634; U. S. v. Blank, 261 F. Supp. 180.

Illegally obtained evidence has been held inadmissible in deportation proceedings. Ex parte Jackson, 263 Fed. 110 (D.C. Mont. 1920), appeal dismissed sub nom. Andrews v. Jackson, 267 Fed. 1022 (9th Cir. 1920).

Illegally obtained evidence has been likewise excluded in civil action to recover duties on records imported into the United States, Rogers v. United States, 97 F. 2d 691 (CA 1.1938), has been barred in civil assessment proceedings where it had been offered to show the operation of a business having taxable income consequence. Tover v. United States, 83 F. Supp. 47 (N.D. Ill. 1948); Lassoff v. Gray, 207 F. Supp. 843 (W.D. Ky.

1962). It has been ruled out in a proceeding instituted to effect the mere discharge of a civil service employee. Powell v. Zuckert, supra.

The evidentiary exclusions called for by the Fourth and Fifth Amendments are not only applicable to criminal cases. The Amendments are imperative under the Bill of Rights if society is to protect its zone of deep privacy.

As Judge Brandeis said in Olmstead v. United States, 277 U. S. 438, 478 (1928) (dissenting opinion) . . . 'the right to be left alone - the most comprehensive of rights and the rights most valued by civilized men'. The Fourth Amendment reflects a proper consideration of the effect of searches and seizures by anyone, public official or private individual, upon the search victim. The rule of exclusion is a judicially created remedy designed to implement Fourth and Fifth Amendment rights. United States v. Calandra, 414 U. S. 338, 348 (1974). Nothing in the Fourth Amendment forbids applying Constitutional prohibitions to private suits, private acts, governmental actions unrelated to criminal ones. The Amendment does not distinguish between criminal and civil. Its mandate is absolute.

Courts should not become accomplices in permitting benefits to flow from lawless acts and whether the search or arrest is governmental or private, it is lawless and illegal unless supported by a properly issued arrest and search warrant. "When Judges" wrote Judge Brennan in his dissenting opinion in Calandra "appear to become accomplices in the willful disobedience of a Constitution they are sworn to uphold, we imperil the free foundation of our beliefs, trust in their government on which our democracy rests". U. S. v. Calandra, (supra) at 360.

The Supreme Court in its last term considered the rule of exclusion in U. S. v. Janis, --- U. S. ---, 96 Sup. Ct. 3021. A civil action had been brought by Janis in a U. S. District Court for an income tax refund. The argument was advanced that the sole basis for the computation of the civil tax assessment was on illegally procured evidence. Janis prevailed in the District Court and the U. S. Court of Appeals for the Ninth Circuit. The Supreme Court granted certiorari and the issue squarely presented in this case was whether evidence unconstitutionally seized by a State criminal law enforcement officer was admissible in a civil proceeding by or against the United States.

Mr. Justice Blackman, writing for the majority, indicated that the door is not closed with regard to applying the exclusionary rule to civil proceedings involving governmental parties.

The Janis case, however, held that the evidentiary rule of exclusion as judicially evolved need not be extended to civil actions involving the Federal Government where the illegally seized documents derive from separate and unwarranted State activities. Left open, however, and of major importance was the non-resolution of the problem and any indication of the position to be taken by the Court if the acts complained of were intra-sovereign. In other words, if a wrongful seizure was made directly by a Federal official, the Court might well have ruled differently. The Court stated that this intra-sovereign problem was not presented by the Janis case and they would not pass on the question of whether the exclusionary rule is to be applied in a civil proceeding involving an intra-sovereign violation.

At the very least, the Janis case de-emphasizes the Supreme Court's previous dependence upon criminal or quasi-criminal necessity as a factor in its definition of proceedings falling within the protective sweep of the Fourth Amendment's prohibition against unlawful arrests or seizures.

The Janis case was purely a civil suit for refund of income taxes paid and was nothing but a purely civil action at law.

The Supreme Court in Janis reserved the right to reconsider the point if determined that Federal officials were involved in the illegal obtention of evidence.

Many scholars and writers believe that the exclusionary rule deserves unlimited application and that it should apply equally in criminal proceedings or civil actions. All tainted evidence should be excluded, irrespective of the nature of the proceedings, the forum or the parties.

CONCLUSION

It is respectfully submitted that by reason of the above and in view of the refusal of the Immigration Judge to permit petitioner to testify as to the facts and circumstances surrounding a claimed illegal and unlawful arrest, the motion to suppress should have been granted and proceedings terminated. The decision of the Board of Immigration Appeals should be reversed and deportation proceedings against petitioner terminated. Further, the order of deportation should be vacated, and if the proceedings are not terminated, voluntary departure should be granted to petitioner.

Respectfully submitted,

DAVID E. OLTARSH
Attorney for Petitioner
225 Broadway
New York, N. Y. 10007

INDEX OF RECORD OF PROCEEDINGS

Deportation Proceedings Re: Anastasios Katris, a/k/a Stash
Katres, File A21 061 998

	<u>Page No.</u>
1. Decision of Board of Immigration Appeals dated January 28, 1977	A1-A2
2. Notice of Appeal to Board of Immigration Appeals dated November 14, 1975	A3
3. Brief in support of appeal to Board of Immigration Appeals	A4-A16
4. Decision of Immigration Judge dated November 7, 1975	A17-A19
5. Transcript of hearing before Immigration Judge on November 7, 1975	A20-A31
6. Petitioner's Notice of Motion to Suppress dated November 7, 1975	A32-A33
7. Order to Show Cause dated October 24, 1975	A34



United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

File: A21 061 998 - New York

JAN 28 1977

In re: ANASTASIOS KATRIS aka STASH KATRIS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David E. Oltarsh, Esquire
225 Broadway
New York, New York 10007

CHARGE:

Order: Sec. 241(a)(1), I&N Act (8 U.S.C. 1251
(a)(1)) - Excludable at time of
entry under section 212(a)(20),
I&N Act (8 U.S.C. 1182(a)(20)) -
not in possession of a valid un-
expired entry document

APPLICATION: Termination or, in the alternative, volun-
tary departure

The respondent appeals from a decision of an immi-
gration judge dated November 7, 1975 finding him de-
portable as charged and ordering his deportation to
Greece. The appeal will be dismissed.

The respondent is a 22-year-old native and citizen
of Greece. He entered the United States on or about
September 25, 1971 at Buffalo, New York with the in-
tention to remain indefinitely in the United States
and was not then in possession of a valid immigrant
visa or other entry document for permanent residence.

At the hearing, the respondent, through counsel,
admitted the factual allegations in the Order to Show
Cause subject, however, to the legality of the respond-
ent's interrogation and arrest.

An offer of proof (Ex. 2, Tr. p. 2) was made by counsel on the issue of the legality of the actions by the Service officers. We find that that offer of proof is insufficient to establish a prima facie case of illegality.

The offer of proof by counsel is to the effect, in substance, that Service officers went to a restaurant and approached its owner. The owner of this restaurant appears to have been an alien lawfully admitted for permanent residence. The Service officers asked and received permission to proceed to the kitchen area and interrogate the restaurant's employees. The offer of proof is further to the effect that all the employees were aliens lawfully admitted for permanent residence.

It appears that at this point the respondent, who had entered subsequently, was approached and questioned by the Service officers. Assuming the truth of these allegations, a prima facie case of illegality has not been made that would place on the Service the burden of justifying its actions. See Matter of Burgos, Interim Decision 2375 (BIA 1975); Matter of Tang, 13 I&N Dec. 691 (BIA 1971). Therefore, we find that the respondent's deportability has been established clearly, convincingly and unequivocally by the admissions made at the hearing.

The denial of voluntary departure in the exercise of discretion was proper. The record reveals that the closest relatives of the respondent in the United States are a brother and a sister. The respondent eluded inspection at a checkpoint at the international border with Canada. The record also discloses that the respondent started working almost immediately after he entered the United States. There are no favorable equities on the respondent's behalf. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Chairman

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:
IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway

New York, N.Y. 10007

In the Matter of:

ANASTASIOS KATRIS a/k/a
Stash Katres

File No. **A21 061 998**

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated **November 7, 1975**, in the above entitled case.

2. Briefly, state reasons for this appeal.

(a) It was error for the Immigration Judge to refuse to permit the respondent or any witnesses on his behalf to testify when, pursuant to notice duly served, the respondent had demanded the right to offer sworn testimony both by himself and by a witness as to the circumstances leading up to and surrounding his detention and arrest. It was claimed and an offer of proof was made, that respondent was seized and arrested without probable cause, any reasonable basis or justification. The Immigration Judge refused to permit any actual testimony on respondent's behalf to substantiate and prove the respondent's claim and to shift the burden upon the Immigration Service to justify the facts and basis of the claimed unlawful and unreasonable arrest. (b) Failure to subpoena and produce material witnesses at the hearing as demanded in his notice by respondent. (c) Failure of the Judge to base his determination upon legally admissible evidence and a lack of admissible evidence or proof that respondent is an alien disportation to deny the respondent voluntary departure in lieu of deportation.

3. I do not desire oral argument before the Board of Immigration Appeals in Washington, D. C.

4. I am filing a separate written brief or statement.

Signature of Appellant (or attorney or representative)

DAVID E. OLTARSH

(Print or type name)

November 14, 1975

Date

225 Broadway, New York, N.Y. 10007

Address (Number, Street, City, State, Zip Code)

INSTRUCTIONS

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

File
11/18/76

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
BOARD OF IMMIGRATION APPEALS

In the Matter of

File A21 061 998

ANASTASIOS KATRIS, a/k/a STASH KATRES,

Respondent

MEMORANDUM OF LAW ON BEHALF OF RESPONDENT

The Facts

Respondent is a native and citizen of Greece who entered the United States at or near Buffalo, New York, on or about September 25, 1975. He was not in possession at that time of a valid immigrant visa or other entry document.

On October 24, 1975 at about 10 A. M. respondent was arrested by officers of the Immigration Service in a restaurant located on 56th Street between Fifth & Sixth Avenues, New York City. The respondent asserts that the officers in entering the restaurant spoke to the owner, demanding his green card. The owner had a green card as he had been here for 15 years as a permanent resident. The owner granted the Immigration officers permission to go in the back and interrogate his employees. Respondent claimed that all the employees had green cards and were lawful permanent residents.

The respondent himself entered the restaurant and while drinking a glass of water was asked by Immigration inspectors for his green card. Respondent stated that he was on vacation and showed his Illinois drivers'

license. At that moment, without any further questions or interrogation, the officers seized and arrested him and took respondent to the Immigration office under arrest.

After the arrest and while under detention the identification information regarding respondent was supplied by respondent to the Immigration officers. He was thereafter served with an order to show cause dated October 24, 1975 as to why he should not be deported from the United States on the various charges contained therein. Bond was posted for the respondent and he appeared at a deportation hearing on November 7, 1975.

Statute Involved

Immigration and Nationality Act, Sec. 287, 8 USC 1357, provides in relevant part:

- (a) "Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant - (1) to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States;
- (2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or expulsion of aliens or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States; * * * * "

The Deportation Hearing of November 7, 1975

At the commencement of the deportation hearing the respondent served an affidavit and notice of motion upon the Trial Attorney for the Immigra-

tion & Naturalization Service and the original upon the Immigration Judge, claiming that respondent wished to give sworn testimony relating to the facts and circumstances of his arrest which was claimed to have been unwarranted, unlawful and without any reasonable suspicion or reason to believe that respondent was an illegal alien. The said notice and affidavit was accepted by the Immigration Judge and received in evidence as Exhibit 2; the original order to show cause was received by the Immigration Judge as Exhibit 1.

At the commencement of this deportation hearing an objection was made as to the admissibility of the arrest of respondent and any information obtained thereafter as being a violation of respondent's Fourth Amendment rights. The Judge permitted an offer of proof to be stated.

The offer of proof stated that the owner of the restaurant on West 56th Street between Fifth and Sixth Avenues was approached by three Immigration officers who came into the premises asking for the owner's green card. He had a green card. It was stated that the owner had been here for 15 years and thereafter the officers asked the owner for permission to interrogate his employees in the back. With the owner's permission the officers interrogated the employees and found that they all had green cards. It was offered as proof, if respondent were permitted to testify, that he came in through the front door and there were five or six other customers in the restaurant, and he went to get a drink of water and the two officers came over to him and asked for his green card. He stated he was on vacation and showed them his Illinois drivers' license. The officers then seized respondent, one on either arm, and said: "Come with us, you are

under arrest, down to Immigration". They did not ask respondent for his right to be here or to remain in the United States.

After the arrest which had no reasonable basis, no suspicion, no reason to believe that respondent was an unlawful or illegal alien, and while under arrest, respondent supplied the Immigration Service with identification information.

The Immigration Judge did not permit respondent or the owner of the restaurant to testify as he contended that respondent was deportable on the basis of his responses to the questions at the deportation hearing over objections.

The respondent's deportability was not conceded and he maintained that the admissibility of the identification information secured by Immigration officers as the direct result of an unlawful and illegal arrest should have been suppressed.

At the very least, the respondent and any witnesses in his behalf should have been permitted to testify and the Immigration Service should have had the burden of establishing their "reason to believe" that respondent was an unlawful alien.

The Immigration Judge also undertook respondent's application for voluntary departure as a separate application and after hearing testimony on this issue rendered his decision ordering the respondent deported from the United States to Greece and denying respondent the privilege of voluntary departure.

POINT I

THERE WAS NO EVIDENCE ADDUCED AT THE DEPORTATION HEARING TO ESTABLISH "REASON TO BELIEVE THAT THE ALIEN WAS IN THE UNITED STATES IN VIOLATION OF LAW OR REGULATION". NO PROBABLE CAUSE WAS ESTABLISHED TO HAVE WARRANTED THE

SEIZURE OR ARREST OF THE RESPONDENT.

The statute referred to previously, Sec. 287(a)(2), requires reason to believe that the alien is in the United States in violation of law or regulation before a valid arrest can be made. The "reason to believe" referred to in the statute has been analogized to "probable cause which traditionally underlies criminal arrests. L. Franca v. INS, 413 F 2d 686, 689 (2nd Cir. 1969).

In the instant case the Immigration Judge refused to permit the respondent to describe the facts and circumstances surrounding his arrest and detention notwithstanding the admission into evidence of Exhibit 2, which alleged respondent had been unlawfully arrested.

Thus, in effect, the Immigration Judge held that no matter what the circumstances of a seizure or arrest of an alien in the United States, no issue can be raised as to the legality, reasonable suspicion, or lack of probable cause of such an arrest.

It is respectfully submitted that this is not the law.

In a recent case, Jose Gil Ojeda-Vinales v. INS, Docket 74-2634, decided September 23, 1975 by the U. S. Court of Appeals, 2nd Circuit, the Court sustained the validity of the arrest therein only by a finding that there was probable cause because of information supplied to the Immigration Service in the nature of a complaint that a specifically described illegal alien named Jose was working as a mechanic at a specified address. Officers went to that address and were advised by the garage owner that a person of that description was in fact employed there. On these particular facts the Court of Appeals held that there was a reasonable suspicion to

establish probable cause to interrogate and arrest the alien.

The Court stated in Ojeda-Vinales (supra):

"Section 287(a)(1) permits INS officers to interrogate and temporarily detain an alien upon 'circumstances creating a reasonable suspicion, not rising to the level of probable cause to arrest, that the individual so detained is illegally in this country.'" Au Yi Lau v. INS, 445 F 2d 217, 223 (D.C. Cir. 1971)."

Obviously, if no requirement of reasonable suspicion was necessary, the Court of Appeals would not have spent four pages in Ojeda-Vinales discussing probable cause and reasonable suspicion necessary to arrest an alien. See U. S. v. Salter, slip op. page 5647 (2d Circ.) 8-15-75; U. S. v. Brignoni Ponce ---U.S. ---, 43 U.S.L.W. 5028, 5032, U. S. June 30, 1975.)

Accordingly, it is respectfully submitted that the Immigration Judge erred in refusing to permit the respondent to testify as to the facts and circumstances surrounding his claimed unlawful arrest. No evidence of a reasonable suspicion was established by the Immigration Service.

The only evidence adduced at the deportation hearing was the evidence objected to by the respondent insofar as admissibility was concerned. The Immigration Judge totally disregarded the objections as to admissibility of this evidence against the respondent and found him deportable on this testimony.

It is respectfully submitted that the respondent, over objection, did not deny his country of birth, citizenship or other allegations contained in the order to show cause. The truth of the allegations would have been conceded but their admissibility against respondent is what was being challenged; as having been unlawfully obtained subsequent to an illegal

arrest.

It is analogous to a criminal defendant admitting that the object which a District Attorney holds up in Court is a revolver or a container of heroin, but contests admissibility against him by reason of an illegal or unlawful arrest and search, and the improper obtention of the evidence. Obviously, no one would deny the actual fact that the revolver is a revolver or that the blackjack is a blackjack. What is being contested is not the truth of the item's identity (in this case that of the respondent himself), but the admissibility of the evidence challenged by a claim of unlawful arrest without probable cause.

POINT II

AS NO PROBABLE CAUSE NOR ANY REASONABLE SUSPICION WAS ESTABLISHED TO JUSTIFY THE SEIZURE AND ARREST OF THE RESPONDENT, THE RESPONDENT SHOULD HAVE BEEN PERMITTED TO TESTIFY, THE MOTION TO SUPPRESS GRANTED, AND THE PROCEEDINGS TERMINATED.

The Immigration Service has never disputed that the Fourth Amendment to the U. S. Constitution protects aliens as well as citizens. U. S. vs. Brignoni-Ponce (supra); Almeida-Sanchez v. U. S., 413 U. S. 266. At the very least, by reason of the respondent's claim of an unlawful arrest and the absence of probable cause or reasonable suspicion, the respondent should have been afforded an opportunity to testify at the deportation hearing. If respondent's testimony established prima facie lack of reasonable suspicion or probable cause, the burden of proof would then be shifted to the Immigration Service to establish the probable cause and reasonable suspicion necessary to justify the arrest herein.

The Immigration Judge failed and refused to afford the respondent his

constitutional right to prove that the government had in fact engaged in the unlawful and illegal activity resulting in his arrest and the obtaining of the information against him.

U. S. v. Brignoni-Ponce (supra), has now settled that an immigration investigation or detention must be based on "reasonable suspicion". In the instant case there is not a scintilla of evidence as to the basis, probable cause, or reasonable suspicion necessary to have justified the respondent's arrest.

The rights of the respondent are subject to the rule in Terry v. Ohio, 392 U. S. 1, where it was stated that the stopping of a person must be based upon "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion". The evidence herein, it is respectfully submitted, falls short of the standards for reasonable suspicion and probable cause. Brinegar v. U. S., 338 U.S. 160, Smith v. U.S., 358 F. 2d 833.

It is elementary that a hunch or conclusion based on good faith may not be sufficient basis for an intrusion into a person's right to be free of illegal search and seizure. Terry v. Ohio, (supra). There must be more than mere suspicion to justify an arrest. It must be a reasonable suspicion.

If we assume, as asserted by respondent, that the arresting officers never interrogated him at all, did not obtain permission of respondent himself with regard to obtaining any information from respondent prior to his arrest; that they merely immediately arrested him; any subsequent statement or admission made after his arrest was violative of his consti-

tutional rights and should have been suppressed.

The question of alleged illegal police action and its effect on the admissibility of information obtained has been reviewed by the Supreme Court of the United States in the Silverthorne-Nardone-Wong Sun trilogy (Silverthorne Lumber Company v. U.S., 251 U. S. 385; Nardone v. U. S., 308 U. S. 338, and Wong Sun v. U. S., 371 U. S. 471) which cases developed the doctrine known as the "fruit of the poisonous tree".

"Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry whether these intrusions be termed 'arrests' or 'investigatory detentions'. Davis v. Mississippi, 394 U.S. 721, 726-27, 89 S. Ct. 1394, 1397).

Moreover, the Supreme Court stated: "Thus, even if the statements in this case were found to be voluntary under the Fifth Amendment, the Fourth Amendment issue remains. In order for the causal chain, between the illegal arrest and the statements made subsequent thereto, to be broken, Wong Sun requires not merely that the statement meet the Fifth Amendment standard of voluntariness but that it be 'sufficient an act of free will to purge the primary taint'. (Wong Sun v. U.S.; 371 U.S. at ;486). Wong Sun thus mandates consideration of a statement's admissibility in light of the distinct policies and interests of the Fourth Amendment."

The unlawful stopping of the respondent and his arrest has unveiled the question of whether or not there has been an initial tainting of the respondent's subsequent statements to the arresting officer. It is apparent that the arresting officer exerted a compelling influence over any "voluntary" statements made by respondent subsequent to his arrest.

Based on the totality of the circumstances of this case, it should be held that the initial stopping of this respondent and his unwarranted detention created a primary taint that was exploited to induce the respondent's subsequent statements and admissions. There was no evidence adduced to sufficiently dissipate that primary illegality or lack of "reasonable suspicion". This case has established a clear-cut nexus between the primary illegality of the arrest and the subject matter of the respondent's motion to suppress.

The respondent's motion to suppress the evidence and information illegally obtained and without reasonable suspicion, should have been granted.

The respondent also respectfully refers to the recent decision in Illinois Migrant Council et al v. Pilliod, et al, (DD-Chicago) District Court, Northern District Illinois, Eastern Division, #74C 3111 (7/29/75), where the Court granted a preliminary injunction against INS-Chicago, restraining it from mass raids on factories, dormitories and from stopping people on the street just because (in that case) they looked Mexican and with little or no probable cause. There is a full discussion on INS authority as against the protection of the Fourth Amendment, citing *inter alia*, Terry v. Ohio (supra) and U. S. v. Brignoni-Ponce (supra).

Also see U. S. v. Karathanos, Eastern District, New York (#75-456) (8-1/75). There the Court granted a motion to suppress evidence taken in an INS raid of premises where illegal aliens were found. Defendants having been charged with harboring and concealing under 8 USC 1324, the Court determined that the affidavit of INS investigator, which was the basis

of Federal Magistrate's search warrant, was insufficient to show probable cause with a discussion by the Judge of what constitutes probable cause.

(A) The exclusionary rule under the Fourth Amendment has been applied to civil proceedings which involve intra-sovereign violations. In other words, where Federal officers violate a person's Fourth Amendment rights the illegally-obtained information may nevertheless be suppressed although the proceedings are civil rather than criminal.

Pizzarello v. U.S., 408 F. 2d 579; Knoll Associates Inc. v. F.T.C., 397 F. 2d 530; Powell v. Zuckert, 366 F. 2d 634; U. S. v. Blank, 261 F. Supp. 180.

Illegally obtained evidence has been held inadmissible in deportation proceedings. Ex parte Jackson, 263 Fed. 110 (D.C. Mont. 1920), appeal dismissed sub nom. Andrews v. Jackson, 267 Fed. 1022 (9th Cir. 1920).

Illegally obtained evidence has been likewise excluded in civil action to recover duties on records imported into the United States, Rogers v. United States, 97 F. 2d 691 (CA 1. 1938), has been barred in civil assessment proceedings where it had been offered to show the operation of a business having taxable income consequence. Tover v. United States, 83 F. Supp. 47 (N.D. Ill. 1948); Lassoff v. Gray, 207 F. Supp. 843 (W.D. Ky. 1962). It has been ruled out in a proceeding instituted to effect the mere discharge of a civil service employee. Powell v. Zuckert, 366 F. 2d 634 (D.C. Cir. 1966).

The evidentiary exclusions called for by the Fourth and Fifth Amendments are not only applicable to criminal cases. These Amendments are

imperative under the Bill of Rights if society is to protect its zone of deep privacy.

As Judge Brandeis said in Olmstead v. United States, 277 U. S. 438, 478 (1928) (dissenting opinion). . . ' the right to be left alone - the most comprehensive of rights and the rights most valued by civilized men". The Fourth Amendment reflects a proper consideration of the effect of searches and seizures by anyone, public official or private individual, upon the search victim. The rule of exclusion is a judicially created remedy designed to implement Fourth and Fifth Amendment rights. United States v. Calandra, 414 U.S. 348 (1974). Nothing in the Fourth Amendment forbids applying Constitutional prohibitions to private suits, private acts, governmental actions unrelated to criminal ones. The Amendment does not distinguish between criminal and civil. Its mandate is absolute.

Courts should not become accomplices in permitting benefits to flow from lawless acts and whether the search or arrest is governmental or private, it is lawless and illegal unless supported by a properly issued arrest and search warrant. "When Judges" wrote Judge Brennan in his dissenting opinion in Calandra "appear to become accomplices in the willful disobedience of a Constitution they are sworn to uphold, we imperil the free foundation of our beliefs, trust in their government on which our democracy rests". U. S. v. Calandra, (supra) at 360. (h)

POINT III

IT WAS AN ABUSE OF DISCRETION FOR THE IMMIGRATION JUDGE
NOT TO HAVE GRANTED VOLUNTARY DEPARTURE IN LIEU OF DEPORTATION.

The testimony at the deportation hearing revealed that while the

respondent entered the United States without a visa, there was no evidence involving any payment to cross the border nor any conspiracy with any smuggler to enter the United States. The respondent after his entry went to work with a relative in Illinois and thereafter with his brother-in-law in New York City.

The Immigration Judge arbitrarily and capriciously concluded that the respondent's version of his entry into the United States was a "contrived and false story".

The Immigration Judge abused his discretion in failing to award the respondent the discretionary relief of voluntary departure in lieu of deportation.

CONCLUSION

It is respectfully submitted that by reason of the above and in view of the refusal of the Immigration Judge to permit the respondent to testify as to the facts and circumstances of an illegal and unlawful arrest without probable cause or reasonable suspicion, this motion to suppress should have been granted and the proceedings terminated. The respondent should have been granted voluntary departure as a discretionary relief in lieu of deportation.

Respectfully submitted,

DAVID E. OLTARSH
Attorney for Respondent
225 Broadway
New York, N. Y. 10007

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No.: A21 061 998 - New York, New York

November 7, 1975

In the Matter of)
KATRIS, Anastasios)
aka KATRES, Stash)
-Respondent-)

IN DEPORTATION PROCEEDINGS

CHARGE:

I&N Act Section 241(a)(1);
not in possession of a
valid unexpired entry document

APPLICATION:

Voluntary departure

IN BEHALF OF RESPONDENT:

IN BEHALF OF SERVICE:

David E. Oltarsh, Esq.
225 Broadway
New York, New York 10007

Mr. DeGaeto
Trial Attorney

ORAL DECISION OF IMMIGRATION JUDGE

Respondent is a 21 year old single male alien, a native and citizen of Greece, who entered the United States at or near Buffalo, New York on or about September 25, 1975, at which time he intended to remain in the United States indefinitely. He was not in possession of a valid immigrant visa or other entry document. The foregoing facts relating to the respondent's arrival and alienage are conceded to be true by respondent's attorney. He is therefore deportable on the charge set forth in the Order to Show Cause.

Respondent's attorney has made the contention that the entire proceeding before me should be in effect quashed because he contends

that the respondent was brought to the attention of the Immigration Service as a result of an unlawful interrogation by Immigration Officers in a restaurant in New York City. I am not satisfied were all of the allegations offered to be proven by the respondent and shown to be facts that a case of an unlawful stop or unlawful interrogation could be made out. The offer of proof would establish nothing more than that the respondent was one of a number of aliens who were subjected to a voluntary interrogation in a restaurant after having spoken to several persons, all of whom proved to be aliens. It certainly was not unreasonable for the Investigators to also inquire of this respondent as to his status. However, assuming the facts as alleged could be established I find that they would be irrelevant since the respondent's admissions made in the course of this hearing are sufficiently an act of free will to purge the primary ^{thought} ~~intent~~ taken even if it had existed. I therefore have declined to grant the respondent's motion.

Respondent has selected Greece as the country to which he desires to be sent if deported. He has applied for the privilege of voluntary departure. He has testified that his only arrest was in connection with his immigration status in October of 1975, four years after he was assisted in crossing the border and entering the United States. The respondent's testimony that he was brought across the border by a total stranger who not only was not paid, but who actually advanced funds to the respondent and paid his hotel bills is, I am convinced, a contrived and false story. However, what is clear and undisputed

is that respondent entered the United States without a visa and also almost immediately thereafter was employed by relatives here in the United States. It appears that he has been sheltered by those relatives, a cousin in Illinois, a brother-in-law and sister in New York, and it is apparent that this not only involved a violation by the respondent, but the known cover-up of this violation by these other relatives. In the circumstances I am convinced that the respondent's violation was a willful and deliberate one which should not be condoned. To grant the privilege of voluntary departure for a period of two or three months as the respondent requests would be nothing short of a condonation of his misconduct. Thus I will deny his application for discretionary relief. In the exercise of discretion deportation will be ordered.

ORDER: IT IS ORDERED that the respondent be deported from the United States to Greece on the charge contained in the Order to Show Cause.

FRANCIS J. LYONS
IMMIGRATION JUDGE

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A-21 061 998

KATRIS, Anastasios

IN DEPORTATION PROCEEDINGS

aka KATRES, Stash

TRANSCRIPT OF HEARING

-Respondent-

Before: FRANCIS J. LYONS, Immigration Judge

Date: NOVEMBER 7, 1975 Place: NEW YORK, NEW YORK

Transcribed by JO ANN WETH Recorded by GRAY

Official Interpreter MR. TSOPONAKOS

Language GREEK

APPEARANCES:

For the Service:

MR. DeCAETO

Trial Attorney

NEW YORK, NEW YORK

Station

For the Respondent:

DAVID E. OLTARSH, ESQ.

225 BROADWAY

NEW YORK, NEW YORK 10007

1 HEARING HELD: November 7, 1975

2 IMMIGRATION JUDGE TO RESPONDENT THROUGH INTERPRETER:

3 Q What is your name?

4 A Anastasios Katris.

5 Q Mr. Oltarsh is your attorney?

6 A Yes.

7 Q Stand and raise your right hand. Do you solemnly swear the testimony
8 you will give in this proceeding will be the truth, the whole truth, and
9 nothing but the truth, so help you God?

10 A I swear.

11 IMMIGRATION JUDGE TO COUNSEL:

12 Q Do you concede service of the Order to Show Cause?

13 A Yes.

14 Q Waive reading of contents?

15 A Yes.

16 Q Do you concede the truth of the five factual allegations in the Order?

17 A Before I concede that, I have served upon the Government a notice with
18 regard to eliciting information and requesting the right of witnesses
19 to testify in his behalf as to the facts and circumstances surrounding
20 his arrest. I would contest the admissibility of the allegations in
21 the Order to Show Cause by reason by method of the attention.

22 Q When it becomes a question I will deal with it. My question is whether
23 or not you concede the five factual allegations in the Order?

24 A I am not trying to be argumentative by any means. I am saying over my
25 strenuous objection as to their admissibility by reason of the lack of
26 probable casue, or lack of reasonable basis to have stopped/to have
and

-1-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-21

1 arrested this man to begin with. The actual truth of items one through
2 five subject to my objection to their admissibility I will concede.

3 Q You want to show that somehow or other this man came to the attention
4 of the Service in a manner involving an unlawful arrest in violation
5 of the 4th Amendment?

6 A That is correct. I have a witness here in this case. The owner of the
7 restaurant in which this man was seized.

8 Q What would you offer to prove?

9 A I would offer to prove that Mr. Nicholas , the owner of a
10 restaurant on West 56th Street, between 5th and 6th Avenue, was approached
11 by three Immigration Officers who came into the premises asking for his
12 green card. He had a green card. He's been here 15 years. They asked
13 him for permission to go in the back and interrogate his employees.
14 They did that.

15 Q With his permission?

16 A With his permission. They found that all those employees had green
17 cards. This gentlemen, the respondent, came in through the front door
18 as there were five or six other customers in the restaurant. He went
19 over to get a drink of water and it will be offered as proof that two
20 Immigration Officers came over to him and asked him for his green card.
21 He then stated that he was on vacation here and his driver's license
22 from Illinois he showed them. Then two Immigration Officers seized him,
23 one on either arm and said, "come with us; you are under arrest; down
24 to Immigration". The owner of the restaurant witnessed this. He would
25 corroborate this factual pattern. They did not ask him for his right
26 to be here and remain in the U.S. That was the total sum and substance

-2-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-22

1 of the conversation and the actions of the Immigration Officers and it
2 is our contention that based on those facts, the man coming into the
3 restaurant could have been a customer, he could have been anybody and
4 he showed them

5 Q You say that somehow or other converted him into a permanent resident?

6 A No. I don't say that. I say on those facts they had no reasonable
7 basis nor suspicion to suspect that this gentlemen was an unlawful or
8 illegal alien and they.

9 Q They arrested him?

10 A They arrested him at that spot and at that point. He then, of course,
11 after being under arrest supplied them with the identification infor-
12 mation which is on the Order to Show Cause which as a matter of fact
13 and in reality is proof. So that's the offer of proof. On those facts
14 alone. His merely walking into the restaurant to have some or
15 whatever else.

16 Q What is the legal conclusion you want me to draw?

17 A I want you to draw the conclusion that by reason of their not having a
18 reasonable suspicion or probable cause to seize or arrest the man that
19 the information obtained subsequent to the arrest was unlawfully obtained.
20 It should be suppressed and the proceedings terminated.

21 Q Including the admission made here this morning?

22 A I say that my admissions were made subject to any objection as to their
23 admissibility and I merely draw the analogy to the suppression of heroin
24 or a revolver. The physical identity of the item could hardly be dis-
25 puted if the District Attorney or the Judge holds up the revolver or
26 the heroin, but its admissibility as against the defendant in a criminal

-3-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-23

1 case would be the thing that's challenged, so here I can't in all con-
2 science say that the man is not a citizen of Greece and all the allega-
3 tions. It is our claim that the information should be suppressed
4 because of this unlawful obtainment.

5 Q Without any reasonable basis?

6 A Not forever. For this proceeding. For termination of this proceeding.

7 Q Then what do we do? Release him? Get him again if you admit he is
8 here unlawfully?

9 A I admitted it and subject and over objection. Theoretically I understand
10 what your honor is getting at. Theoretically it is my position that if
11 the Immigration Service had an independent legitimate basis besides
12 from this proceeding that this respondent would come to their attention
13 lawfully with a warrant or on a complaint or whatever other method
14 that would not taint it as I claim this is he would not be immune from
15 it.

16 Q I will deny your motion to suppress anything which hasn't been presented.
17 I will find the respondent deportable on the basis of these admissions.

18 A In connection with that may I merely ask that my notice which was
19 previously served on the Government be at least marked in evidence?

20 Q Mark it as EXHIBIT NO. 2. Any application for discretionary relief?

21 A Without prejudice to my previous request which you have denied, I would
22 at this time, without conceding anything or without waiving anything
23 in my previous statements or any rights asserted move for voluntary
24 departure.

25 IMMIGRATION JUDGE TO RESPONDENT:

26 Q In the event of deportation where would you want to be sent?

-4-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-24

1 A Greece.

2 COUNSEL TO RESPONDENT:

3 Q If you were granted the discretionary relief and privilege of leaving
4 the U.S. voluntarily at no cost to the U.S. Government do you have
5 sufficient funds to pay your own passage back to Greece?

6 A Yes.

7 Q If you were granted this privilege of voluntary departure to return to
8 Greece would you comply with such a grant of relief on the part of the
9 Government?

10 A Yes within the time I will be given.

11 Q Have you ever been, aside from the incident of October 24, 1975 involving
12 the Immigration Service, arrested in ^{any} country in the world?

13 A Never.

14 Q Have you ever been or are you now a member of the Communist Party?

15 A No.

16 Q Do you work?

17 A Yes.

18 Q Where are you employed?

19 A Before I use to work in Illinois. Now I work in James (phonetic)
20 restaurant on 56th Street.

21 Q In connection with your work there do you pay taxes on your earnings?

22 A Yes, everything.

23 IMMIGRATION JUDGE TO RESPONDENT:

24 Q How old are you?

25 A 21.

26 TRIAL ATTORNEY TO RESPONDENT:

-5-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-25

1 Q How did you enter the United States?

2 A First I was a tourist for two months in Canada and then I entered the

3 United States by car.

4 Q Where did you get into the car in Canada?

5 A Buffalo.

6 Q Buffalo is in the United States. How did you get across the border?

7 A I don't know exactly where because I came by car during the night.

8 Q Was it Niagara Falls?

9 A It was right at the border. There was this policeman there and all the

10 cars were passing through, you know, the border.

11 Q Who was the person who brought you across the border in that car?

12 A I don't know. It was a Greek, but I don't know his name.

13 Q Where did you meet him?

14 A I just met him the night before I came here at Montreal and we left

15 together from Montreal.

16 Q At that time when you met him did he give you a name? What did you

17 call him?

18 A We started to talk, you know, the Greeks and I was there talking without

19 money. It was a countryman of mine I asked him for \$5.00 and I also

20 told him that the following day I had to go back to Greece because I

21 had no money and he said would you like to go to the United States.

22 will help you.

23 Q You drove in the car with him for one day?

24 A We left Montreal around lunch time and I don't know how many hours.

25 We came here when it was dark. I don't know how long it took him.

26 Q During the whole time you never called him by name?

-6-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-26

1 A Yes. His first name is George. That I know, but I don't know his
2 family name.

3 Q How many other people were in the car with you?

4 A Two more.

5 Q Were they residents of Canada? Were they residents of the U.S.? What
6 were they?

7 A Permanent residents of Canada.

8 Q Were they also being taken across the border?

9 A We all four entered the United States together, but they were illegally
10 in Canada, were aliens, and also we stopped and the driver spoke some-
11 thing to the person who stopped us there at the border, but they spoke
12 in English; I don't know what they said.

13 Q Did you ever apply for or receive a visa to enter the U.S.?

14 A No. Only to go to Canada where I entered legally.

15 Q To your knowledge do you know if the other two people in the car ever
16 applied for a visa to enter the U.S.?

17 A No, I don't know, but I only know one thing is they had their card
18 and they just showed it to him.

19 Q Where did he take you to when you came to the other side of the border?

20 A He took us to a hotel because it was already around 1:00 in the morning
21 in order to spend the night and he paid for the hotel and the following
22 morning he had left and I stayed there and found a job where I worked
23 for about a week. After this week I went to Illinois.

24 Q In other words, a total stranger brought you across the border and also
25 paid for your room to sleep at night?

26 A Yes.

-7-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-27

1 Q Who found a job for you the next day?
2 A I went around there at the restaurant and found it.
3 Q When did you come to New York.
4 A About four months ago.
5 Q Did you start working immediately when you came to New York?
6 A I stayed without work for about two weeks and then I began working.
7 Q You started working for James Restaurant the first time?
8 A Yes.
9 Q How did you find a job there?
10 A My brother-in-law whose present here has this store.
11 Q Is your sister in the United States?
12 A Yes.
13 Q What's her status?
14 A My brother-in-law came to Greece and they got married there. Then she
15 came here legally.
16 Q Is she a permanent resident?
17 A Yes.
18 Q When did she come to the U.S.?
19 A About three years and a month ago.
20 Q Do you have any other relatives in the United States?
21 A I have a brother.
22 Q What's his status in the U.S.?
23 A He just came like that here and he married here.
24 Q Is he a resident or is he here illegally?
25 A Permanent resident.
26 Q When you went to work in Illinois who did you go to work for? Was it a

-8-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 relative?

2 A A relative of mine in Illinois. A cousin.

3 Q What relation was this person who had the restaurant or whatever you

4 worked for in Illinois?

5 A A cousin.

6 Q Did he know you were coming across the border?

7 A No. I just went to Illinois there and found him.

8 Q How did you know where to find him?

9 A I had from his father, I had taken the address, his address from Greece.

10 Q Do you have any other relatives in the United States?

11 A Many cousins, uncles and .

12 Q When you came across the border did the guard at the border speak to

13 you in any way?

14 A No, only the driver he said something to him and he just looked at me

15 and we just passed.

16 Q You went to work as soon as you came across the border. Did you have

17 a Social Security card to work?

18 A Yes.

19 Q Were you in this country before?

20 A No, never.

21 Q How did you get the Social Security card?

22 A Right away I went there and I filled out a paper and send it in and I

23 got my card right away.

24 Q The next morning you got a card?

25 A About a week or two later I got it.

26 Q When you filled out the application for your Social Security card what

-9-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-29

1 did you tell them your status in the U.S. was?
2 A No I didn't write anything. The guy over there said it was very easy.
3 Q Did the application ask you if you were a citizen of the U.S.?
4 A I don't know. I don't read English.
5 Q Who filled it out for you?
6 A A cousin of mine.
7 Q Is this the cousin you went to work for in Niagara Falls?
8 A Illinois.
9 Q Where did you get the card?
10 A In Illinois.
11 Q A minute ago you said you got the card immediately when you entered the
12 United States?
13 A I said two weeks later I got it.
14 Q Do you have the card?
15 A I have the number it shows on the driver's license.
16 Q You don't have the card itself?
17 A No.
18 Q Let me see the driver's license. Illinois driver's license. There is
19 a Social Security number and it is in the name Stash Kattres. When did
20 you obtain this driver's license?
21 A 11/6/73.
22 COUNSEL TO RESPONDENT:
23 Q Did you pay any money to this man who drove you across the border from
24 Canada to Buffalo?
25 A No, nothing.
26 IMMIGRATION JUDGE: TO RESPONDENT:

1 Q If you were given permission to leave the United States voluntarily,
2 how soon would you go?

3 A Three months.

4 Q Why would it take you that long?

5 A I would like to get some money to take along.

6 IMMIGRATION JUDGE: Anything else, gentlemen?

7 COUNSEL AND TRIAL ATTORNEY: Nothing.

8 (At this point in the proceedings the Immigration Judge orally stated a
9 decision which consists of a discussion of the evidence, findings of fact,
10 a conclusion of law and an order which are transcribed separately and made
11 a part hereof.)

12 IMMIGRATION JUDGE TO COUNSEL:

13 Q - You reserve your right to appeal?

14 A Yes.

15 Q Your time to appeal expires on November 17th. I will give you the
16 necessary forms.

17 HEARING CLOSED

18

19

20

21

22

23

24

25

26

I HEREBY CERTIFY THAT TO THE BEST OF
MY KNOWLEDGE AND BELIEF THE FOREGOING
PAGES NUMBERED 1 TO 11 ARE A COMPLETE
AND ACCURATE TRANSCRIPT OF THE ABOVE
DESCRIBED PROCEEDING.

Transcriber

October 15, 1976

A-31

-11-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A-31

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

In the Matter of

ANASTASIOS KATRIS, a/k/a
STASH KATRES,
(A21 061 998)

Respondent

STATE OF NEW YORK, COUNTY OF NEW YORK, SS:

PLEASE TAKE NOTICE that the undersigned will move that the Immigration Service arrested, seized and/or searched the respondent without a warrant and/or without reasonable or probable cause. The Service will be called upon to assume the burden of justifying the basis and facts upon which it took respondent into custody. The respondent serves notice herein that he wishes to give sworn testimony at the hearing upon his personal knowledge of the facts which show the illegal arrest, seizure and/or search. The respondent further serves notice that he wishes to present a witness' sworn testimony as to the facts and circumstances surrounding the claimed illegal arrest and seizure of respondent.

The undersigned hereby demands the right to present testimony and to have a hearing preliminary to a proposed motion to suppress the evidence resulting from the claimed illegal arrest, and seizure and/or search. On the date in question, the undersigned avers that he was seized and arrested by Immigration officers while in and about a restaurant premises and with no probable cause. The Immigration officers failed to elicit suffi-

cient information concerning any illegal status of the respondent in the United States prior to arresting or seizing him. The undersigned will move to suppress all the information resulting from the said illegal arrest because it was elicited under duress and as the result of an illegal arrest without offering the undersigned any Miranda warnings as quired by the United States Supreme Court.

The respondent herewith also demands that the arresting officers be subpoenaed and produced at the hearing because respondent wishes to question them as their testimony is relevant and material to the issue of the unreasonable arrest, seizure and/or search which was made without probable cause.

Under the Freedom of Information Act, Sec. 552(b)(7) and such other portions of the Act as may be applicable herein, all notes and memoranda relating to this case and which formed any basis for the detention and seizure of respondent are demanded to be produced or the attorney for the respondent be permitted to inspect the same. Also demanded are the names and addresses of any alleged informants relating to the said detention and seizure of the respondent.

/s/
ANASTASIOS KATRIS

Sworn to before me this
7th day of November 1975

DAVID E. OLTARSH
Notary Public, State of New York
No. 30-8218270
Qualified in Nassau County
Commission Expires March 30, 1976

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. **A21 061 998**

In the Matter of **KATRIS, Anastasios aka KATRES, Stash**

Response

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Greece and a citizen of Greece
3. You entered the United States at Buffalo, N.Y.
or about 9/25/71
(date)
4. It was then your intention to remain indefinitely in the United States.
5. You were not in possession of a valid immigrant visa or other entry document for permanent residence.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who are immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document and not exempted from the possession thereof by said Act or regulations made thereunder, under sec. 212(a)(20) of the Act.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 136 Flushing Avenue, Brooklyn, N.Y.

on October 28, 1975(S) at 1:00 p. m, and show cause why you should not be deported from the United States on the charge(s) set forth above

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereat in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention and release are set on the reverse hereof.

Dated:

October 24, 1975

(Signature and Title of Director)
ASSISTANT DISTRICT DIRECTOR
FOR INVESTIGATIONS, N.Y., N.Y.
(City and State)

APPEAR WITH PASSPORT AND
IMMIGRATION DOCUMENTS

LIEN

lent.

on

pur-

f the

ot be

tions
ter in
serve
or re-

COPY RECEIVED
Robert B. Fisk Jr.
UNITED STATES ATTORNEY
Marion L. Bryant
5/11/77